

Tracer Lane Background

July 9, 1993 Certificate of Action. Planning Board approved the definitive subdivision dated Oct. 23, 1987(had been denied 6/21/1988) with the waivers requested.

March 31, 1993 Land Court Amended Judgment after remand. Refusal of the Planning Board to waive regulation relating to the length of dead end roads was an abuse of discretion. Subdivision plan is vacated and the decision remanded to the Planning Board for further action; the residential zoning is invalid and it is not within any zone until town meeting takes steps to classify it and that land may be used to determine FAR. Section 7.9.1 (Developable Site Area) of ZBL would be unenforceable if applies to this locus.

January 13, 1993 Land Court Judgment after remand. Refusal of the Planning Board to waive regulation relating to the length of dead end roads was an abuse of discretion. No reasonably available access from a public way in Waltham to the residentially zoned land.

January 13, 1993 Land Court Decision after remand. “[U]nder the unique circumstances here it was an abuse of discretion for the Planning Board not to waive the regulation governing dead end roads, that the Zoning Classification of a portion of locus as residential is arbitrary and unreasonable and that portion of locus is unzoned until the town meeting acts, and that the exclusions from the developable area are not similarly infirm.”

May 13, 1992 Mass. App. Ct. 517 Nahigian vs. Town of Lexington (and a companion case). This is the board’s appeal of Land Court’s ruling in favor of Nahigian on the two cases that were consolidated for trial (denial of subdivision and residential zoning). “The [Land Court] judgment is vacated and the cases are remanded for further proceedings consistent with this opinion, including a determination: (1) whether the planning board’s denial of a waiver of the dead-end street requirement was reasonable or an abuse of discretion; and (2) whether, for purposes of calling into question the validity of the zoning classification, the lack of reasonable access to the residentially-zoned portion of the land was sufficiently proved by Nahigian, taking into account the posttrial evidence submitted by the town. The orders restricting enforcement of the town’s development regulations and denying admission of the town’s posttrial evidence are vacated.”

“The issue before us is whether the board could reject a plan based upon a clearly stated requirement, understood by the applicant to affect his plan, notwithstanding that the requirement was included in a generally confusing set of regulations... Because the judge decided that the regulations were too confusing to be enforced, she did not reach the question whether the plan complied with the regulation and, if not, whether the board abused its discretion in denying Nahigian a waiver. The plan clearly violated the regulation. The case must be remanded to the trial judge to afford her the opportunity to make the determination whether denial of a waiver was an abuse of discretion...The order enjoining enforcement of the development regulations, however, ought to be vacated in its entirety, since at least some of the regulations are within the board’s authority and are sufficiently clear as written or as applied to this case...”

“The validity of the zoning...the possible lack of access to the area in issue was the primary one tending to establish the unreasonableness of the residential zoning.

April 30, 1991 Complaint filed with Appeals Court

May 30, 1990 Land Court decision on appeal from the decision of the Planning Board disapproving definitive subdivision plan. Development Regulations so confusing that the provisions cannot be enforced. Applicability of the Development Regulations is in doubt and therefore unenforceable. Remanded to the Planning Board to approve the Definitive Plan and the residential zoning as applied to locus is declared invalid.

June 7, 1989 Civil Action in Land Court – Nahigian v. Town of Lexington
Seeks determination that RO zoning is invalid as are certain CRO dimensional regulations (determination of FAR and developable site area).
“There are no sections in Lexington’s regulations exclusively devoted to procedures or standards for approval of subdivisions, and the terminology used blurs the distinction between subdivision control and zoning by confusing the terms ‘definitive site development plan’ and ‘definitive subdivision.’” Judge ordered that the development regulations no longer be enforced but stayed the execution of the order as applied to applicants other than Nahigian pending an appeal or until the board amended or revised the regulations.

June 21, 1988 Planning Board disapproves the definitive subdivision plan: not demonstrated that all necessary facilities and service will be provided; too many unanswered questions; necessary information not submitted in a timely fashion; failure to present documentation that essential public services will be provided by Waltham and no alternatives if not; Tracer Lane already close to unacceptable traffic level of service; proposed dead end street a total of 2,425 feet; and, may present hazards to the Cambridge water supply

May 26, 1989 Complaint in Land Court (Nahigian v. Town of Lexington) asking to declare RO zoning invalid, all land should be in CRO zone, excluding rezoned land from calculation of floor area ratio and developable site area be invalid, and award damages.

February 23, 1988 Planning Board grants extension of time for action on subdivision.

January 20, 1988 Memo from Secretary of Environmental Affairs stating serious reservation about the desirability of the project, primarily about the 1100 foot bridge proposed to access the site and trading 57,200 SF of wetland alteration for 73,000 SF of office space.

October 26, 1987 Application for Approval of Definitive Plan with covenant to secure construction, approval to terminate if construction no begun within two years from endorsement. Memo in support of list of waivers.

July 11, 1987 Certificate of the Secretary of Environmental Affairs that an Environmental Impact Report must be prepared.

May 27, 1987 Preliminary Plan Disapproved.

Cites length of dead-end, use of elevated roadway, provisions of public services, waivers from Development Regulations, fire protection and response time, limited building envelope due to location of upland, negative comments from Fire, Engineering and Board of Health.

May, 7, 1987 Memo from Bergeron, Fire Chief, to Bowyer, Planning Director
Raises concerns about provision of fire services, access and hydrant locations.

April 28, 1987

Memo from George Smith, Director of Public Health in Lexington to Planner
“Without provision for water supply and sewage disposal the Board of Health would not approve this plan.

April 7, 1987

Memo from Francis Fields, Town Engineer to George Smith
“As it now stands, water and sewer service is not legally available. In order to obtain such service from Waltham, a vote of the Lexington Town meeting and Waltham City Council may be needed along with the execution of an intermunicipal agreement.

March 27, 1987 Submission of a preliminary subdivision plan from David C. Johnson on behalf of Harold Nahigian

Tracer Lane will be a continuation of existing private way in Waltham. The project will have a circular driveway in front of the building and a truck delivery hammerhead. The way will be constructed over a wetland area, on a bridge in order to minimize disruption.

February 6, 1987 Traffic Impact Study, One Tracer Lane, Lexington (Barry Pell)

“It is the conclusion of this study that the proposed office development will not generate significant volumes of daily or peak hour traffic. However, the occupancy of existing and newly constructed building space on Tracer Lane will result in traffic capacity deficiencies during the weekday peak commuter hours on Trapelo Road at Tracer Lane and within the adjacent Route 128 interchange with the addition of the proposed development.” Proposed project is a three-story office building with approximately 72,000 gross square feet floor area.

April 13, 1970

Waltham City Council vote resolution

“Resolved: That in the best interests of the city of Waltham, whose interests were disregarded by the action of the Lexington Town Meeting, His Honor, the Mayor of the city of Waltham and the Director of Public Works for the city of Waltham be requested to refrain from entering any agreement to provide the developers of the said Lexington land with sewer, water or drainage utilities;”

1970 Lexington Annual Town Meeting

Article 104 a citizen's petition to add a new CR office and research park district on about 30 acres accessible by Tracer Lane in Waltham. Land rezoned from residential to CRO, dividing the parcel into two districts. Town Meeting grants a change in zoning of 11± acres of the 30 acre parcel to the CRO. The rest remain residentially zoned.

Planning Board Report to 1970 Town Meeting- Planning Board recommends that a lesser area than that requested by the developer be rezoned CR at this time and if no progress is made by DNR and MAPC with disposition of the remainder of the land, the Planning Board will recommend that consideration of further rezoning. MAPC report soon to be out recommends that the Hobbs Brook Basin should eventually be developed as a major recreational area. ...unlikely that Cambridge Water Board will permit any form of active recreation on the reservoir during such time. DNR stated that money is available to purchase this land but that some agreement would first have to be worked out with Cambridge for the use of the reservoir.

March 9, 1970 Waltham City Council passes a resolution stating their opposition to the proposed rezoning.

February 27, 1970 letter from MAPC – the land is adjacent to the Cambridge water land and consists primarily of a steep hillside and a low marshy area that drains into the Reservoir. This land would be a very important part of any state reservation development and the Council has notified Lexington that the rezoning is in conflict with the Open Space Plan proposal. (Offers a meeting with representatives of Cambridge, Waltham, Lexington, Lincoln and DNR.)

February 25, 1970 letter from Lexington Conservation Commission opposing the rezoning.

February 11, 1970 public hearing on rezoning. Article 104 - a citizen's petition to add a new CR office and research park district on about 30 acres accessible by Tracer Lane in Waltham. Land to be rezoned from residential to CRO.